



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 4, 2020

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Niket Jain*, 19 Cr. 59 (PKC)

Dear Judge Castel:

The Government writes respectfully in advance of the conference scheduled for May 6 in the above-referenced case to briefly address one new, baseless claim of Government misconduct raised by defense counsel in his Reply Declaration.

In paragraphs 13 through 20 of his Declaration, defense counsel suggests that the Government made a “deliberate misstatement” at the April 15, 2020 conference in this matter when it stated that the Government “collected 302s and the FBI electronic communications pertaining to the devices and turned them over. I directed the FBI agent to give me all 302s, electronic communications pertaining to the devices, and I turned over those to the defense.” Tr. 13. Defense counsel asserts that this constituted a representation that the only email concerning the devices in the Government’s possession was the October 9, 2018 email previously produced to defense counsel, when in fact other emails exist, including those of October 5 and 17, 2018 discussed in the Declaration of AUSA Tara La Morte. *See* Reply Declaration at ¶¶ 14–16. Furthermore, defense counsel claims that it was only in reliance on this supposed representation that the defense did not seek an order from the Court for discovery of the Government emails regarding the devices. *Id.* at ¶ 18.

As defense counsel is well aware, however, on April 14, 2020 the Government had expressly rejected a defense request for the Government to provide “all email or other communications between the US Attorney’s office and the FBI regarding review of the [] devices.” Instead, the Government agreed to produce only “FBI 302s and Electronic Communications regarding the receipt and handling of Individual-1’s devices.” FBI Electronic Communications are a specific type of FBI document, and two such documents, clearly marked as such, were produced to defense counsel as attachments to the Government’s email. A copy of the relevant email chain is attached hereto as Exhibit A, and the Electronic Communications produced are attached as Exhibit B. As reflected in the Government’s entirely accurate

statement to the Court, these were the FBI Electronic Communications collected by the Government and disclosed to defense counsel on April 14, 2020.

Accordingly, there is no basis for defense counsel's accusation that the Government made any misrepresentations to the defense or the Court regarding the communications disclosed to the defense.

Respectfully,

GEOFFREY S. BERMAN
United States Attorney

by: /s

Samuel L. Raymond / Tara M. La Morte
Assistant United States Attorneys
(212) 637-6519 / 1041